

Conducting a Fair Selection Process

How to make your process fair and EEO
compliant

Debra C. Chew Esq.



Date Here

Overview

What is it?

The law

Common violation



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**What is a fair selection
process?**

Fair Selection

A fair selection process consists of judging people on their ability to do the job not on the basis of one's race, color, sex, age, national origin, religion, genetic information, disability, or EEO activity.



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**What laws are violated by an
unfair selection process?**

The Laws Violated by Unfair Selection

Title VII of the Civil Rights Act of 1964 (Title VII)

The Pregnancy Discrimination Act

The Equal Pay Act of 1963

Sections 501 and 505 of the Rehabilitation Act of 1973

The Age Discrimination in Employment Act of 1967 (ADEA)

The Genetic Information Nondiscrimination Act of 2008
(GINA)



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**What is a common mistake
that can keep an agency's
selection process from being
fair?**

Failing to Retain Selection Records

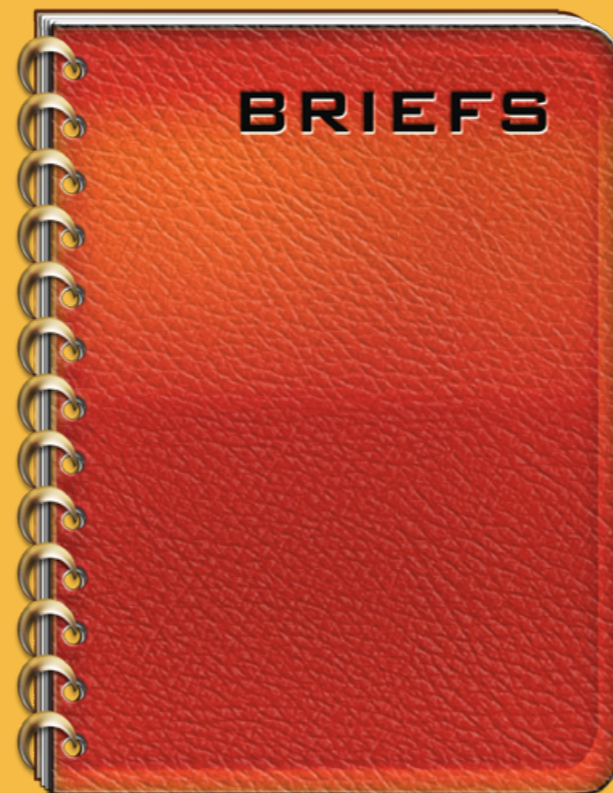
Failing to retain interview notes has proven fatal to an agency's argument when responding to allegations of discriminatory non-selection. An agency is unable to prove that it did not select the complainant for a discriminatory reason.





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Case examples



Case Example 1

Carson v. Department of Justice, Federal Bureau of Prisons

The EEOC was not persuaded by management's negative assessment of the complainant's performance because she received all "exceeds" and "outstanding" ratings. The EEOC determined that the agency failed to provide the votes or vouchering record for the selection. Since the agency failed to comply with requirements to retain its personnel records, the EEOC took an adverse inference against the agency and found that if the missing records were preserved, they would have shown that the agency's explanations for the non-selection were not credible.



Case Example 2

Nyanzi v. Department of Agriculture

After comparing the complainant and the selectee, the EEOC found the complainant's qualifications and experience were similar or better than the selectee's. The EEOC further found that missing documentation from the selection process and the vague recollections of those involved prevented the agency from specifically explaining why the selectee was chosen over the complainant. Because the USDA could not overcome the complainant's prima facie case of discrimination, the EEOC found the complainant established his claim of discriminatory non-selection.



Case Example 3

Newbold-Reese v. Department of Veterans Affairs
Despite the statements by management officials concerning the selection process, the EEOC drew an adverse inference against the agency based on its failure to provide the EEO investigator with requested copies of interview notes and other documentation addressing the reasons the selectee was chosen. The agency admitted that the documentation had not been preserved, which was a violation of EEOC regulations.



Case Example 4

Ly v. Department of Veterans Affairs
Court found in favor of the agency in part because it was able to articulate the selectee's abilities with reasonable specificity in response to the complainant's claim of not being selected due to a protected status. This specificity indicates that the agency took and retained effective notes during its interview process.



Selection Documents

Vacancy Announcement
(internal and external
recruitment, if applicable)

Interview matrix

Referral list

Position Description

Ranking matrix

Application materials
submitted by the top-rated
candidates

Selection memorandum

Rating plan

All notes provided by]
panelists (if applicable).

Interview questions



Interview Best Practices

Take and retain notes

Use a diverse interview panel

Train interviewers on inclusion, diversity, and bias

Maintain interview notes in a secure, centralized location

Base interview questions on job analysis

Ask effective, open-ended and behavioral, questions

Ask each candidate the same interview questions

Use a detailed rating scale

Assess candidate responses objectively

How to Take Notes

Recall

To ensure...

The accurate capture of the content of the interview, and to be able to rate a candidate's responses accurately

To avoid...

The errors inherent to human memory which may result in selective recall of a candidate's strengths and or weaknesses

Establish a record

To ensure...

That the employer can defend its employment decision by reconstructing the interview process

To avoid...

Being unable to defend a contested selection decision.





Contact Us

Debra C. Chew, Esq.
Director, Office of Equity Diversity and Inclusion
E: debra.chew@nih.gov

